**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2018-3000124

: R-2018-3000829

:

Office of Consumer Advocate : C-2018-3001029

Jason Dolby : C-2018-3001074

Peoples Natural Gas Company LLC : C-2018-3001152

Office of Small Business Advocate : C-2018-3001566

Duquesne Industrial Intervenors : C-2018-3001713

Leonard Coyer : C-2018-3002424

NRG Energy Center Pittsburgh LLC : C-2018-3002755

:

v. :

:

Duquesne Light Company :

1308(d) Proceeding :

**EIGHTH INTERIM ORDER**

Grant Motion of

Peoples Natural Gas Company LLC

to Dismiss Objections

and

Compel Answers to Interrogatories (Set II)

On March 28, 2018, Duquesne Light Company (Duquesne Light), Utility Code 110150, filed Supplement No. 174 to Tariff Electric Pa. P.U.C. No. 24 to become effective May 29, 2018, containing a proposed general increase in electric distribution rates of approximately $133.8 million.

By Order entered April 19, 2018, the Commission suspended the implementation of Supplement No. 174 to Tariff Electric Pa. P.U.C. No. 24 by operation of law, pursuant to 66 Pa.C.S.A. § 1308(d), until December 29, 2018, and instituted an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations proposed in Supplement No. 174.

On May 3, 2018, Administrative Law Judge Katrina L. Dunderdale conducted a call-in telephonic prehearing conference at which the participants discussed various procedural matters and established a litigation schedule. Afterwards, on May 8, 2018, the presiding officer issued a prehearing order which, *inter alia*, consolidated the formal complaint filed by Peoples Natural Gas Company LLC (Peoples) against Duquesne Light on April 10, 2018 in the base rate proceeding.

Thereafter, on May 29, 2018, Peoples filed its Motion to Dismiss Objections and Compel Answer to Interrogatories and Requests for Production of Documents (Set II) concerning Nos. 1-27, 32, 33 and 42-44. In its Motion, Peoples averred it served Set II, consisting of items numbered 1-44, upon Duquesne Light on May 16, 2018. Peoples averred Duquesne Light communicated orally to Peoples its objections to four interrogatories and document requests on May 21, 2018, as required by the May 8, 2018 Prehearing Order. Peoples contends, pursuant to the Prehearing Order, Duquesne Light was required to serve notice of the unresolved objections upon the presiding officer by May 23, 2018. Instead, Peoples points out that Duquesne Light serviced its Objections to Various Interrogatories in Peoples Natural Gas Company LLC’s Interrogatories and Requests for Production of Documents – Set II (Objections) concerning Nos. 1-27, 32, 33 and 42-44. Peoples asserted it made another attempt to resolve the discovery dispute with Duquesne Light on May 29, 2018 but the parties were not successful.

Immediately prior and within the context of this discovery dispute, Duquesne Light filed preliminary objections[[1]](#footnote-1) to Peoples’ formal complaint dated April 10, 2018. After receiving Peoples’ answer to the preliminary objections, the presiding officer issued an Interim Order on May 22, 2018 which granted Duquesne Light’s request to dismiss the portion of Peoples’ formal complaint which concerned proposed changes to Tariff Rider 16 on the basis Peoples lacked standing.

Thereafter, Peoples filed a Petition for Interlocutory Review and Answer to Material Question on an Expedited Basis with the Commission. Peoples requested the Commission reverse the presiding officer’s Interim Order dated May 22, 2018 and further requested the Commission find that Peoples had standing to pursue its claims concerning Tariff Rider 16. On June 14, 2018, the Commission granted Peoples’ Petition for Interlocutory Review, and reversed the Interim Order dated May 22, 2018.

Meanwhile, on June 7, 2018, Duquesne Light filed its Answer to the Set II motion. Duquesne Light asserted it objected to Nos. 1-27, 32, 33 and 42-44 (the identified interrogatories) because those items inquired into matters and issues related to the contested Tariff Rider 16. Duquesne Light acknowledged the parties had determined the dispute was likely settled concerning all the identified interrogatories except Nos. 12, 15-17, 21 and 24.

Duquesne Light confirmed it objected to Nos. 21 and 24 because the two interrogatories requested customer-specific data from a single customer and Duquesne Light needed time to confer with the customer. The customer had since given Duquesne Light permission to provide Peoples with the requested information, and no objection remained concerning those two identified interrogatories.

As concerned the remaining four identified interrogatories (Nos. 12, 15, 16 and 17), Duquesne Light objected to those interrogatories on the basis Peoples was attempting to exploit the discovery process in order to obtain information to help Peoples to promote sales of gas to gas-fueled combined heat and power (CHP) projects. Duquesne Light insisted it has not proposed any CHP project in the base rate proceeding and has not included any CHP-related costs in the revenue requirement in the base rate proceeding. Further, Duquesne Light contends Peoples wants to argue in this base rate proceeding that Duquesne Light should expend funds, which will be incorporated into the base rate, for the purpose of promoting CHP projects, which Duquesne Light argues is beyond the scope of this base rate proceeding.

On June 14, 2018, the parties convened together for the purpose of conducting two public input hearings in Duquesne Light’s service territory. Upon learning of the Commission’s Opinion and Order, which reversed the presiding officer’s Interim Order dated May 22, 2018, the presiding officer initiated an off-the-record discussion at the bench with the parties who were present. During the off-the-record discussion, Duquesne Light’s counsel indicated its objections included only Nos. 12 and 15 of the identified interrogatories.

Pursuant to that oral averment, this Interim Order will speak to the continuing objections of Duquesne Light to the identified interrogatories Nos. 12 and 15.

DISCUSSION

Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa.Code § 5.321(c), specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant.” *Id*. Information may be discoverable, even if it would be inadmissible at a hearing. “It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id*. Consistently, the Commission has allowed participants wide latitude in discovery matters. Pa. Pub. Util. Comm’n v. The Peoples Natural Gas Company, 62 Pa. PUC 56 (August 26, 1986); and Pa. Pub. Util. Comm’n v. Equitable Gas Company, 61 Pa. PUC 468 (May 16, 1986).

When evaluating a base rate filing by a certificated utility, the Commission must determine if the proposed rate change is a just and reasonable rate to be charged or applied for the utility service. See 66 Pa.C.S.A. § 1308(c).

Identified Interrogatory No. 12

No. 12 asks: Has Duquesne Light estimated the potential for additional CHP deployment in its service territory? Duquesne Light argues No. 12 lacks relevancy to the base rate proceeding.

If Duquesne Light generated an estimate of the number of CHP projects it expects will be deployed within its service territory, then that estimate could be relevant because the level of deployment would affect the revenue received and the costs incurred by Duquesne Light. For example, if the estimate is high, then the revenue received will be greatly impacted and that impact would have an effect on the revenue requirement as well as the rate of return. If the estimate is low, then CHP projects are likely to have a zero-sum effect. Knowing this information might lead to a better and more fully developed understanding of how CHP projects are impacting the base rate, if at all. Duquesne Light insists the costs and revenues of the CHP-related costs are not included in the base rate revenue requirement. If true, the verified answer to this interrogatory will provide Peoples and the Commission with information that should verify the impact of Tariff Rider 16. Accordingly, this question is clearly relevant to the base rate proceeding, and Duquesne Light will be compelled to answer the identified interrogatory No. 12.

It should be noted that Duquesne Light’s extensive concern about attempts Peoples may or may not be making to expand the number and scope of substantive issues in this base rate proceeding can be handled during the submission of written testimony through surrebuttal and especially during cross-examination of Peoples’ witnesses, if necessary.

Identified Interrogatory No. 15

No. 15 states: Please describe the efforts that Duquesne Light has taken to identify any potential CHP hosts in its service territory. Duquesne Light objects to this identified interrogatory on the same grounds as No. 12 – namely, that there is no relevance when determining the appropriate, just and legal base rate for the Commission to know what efforts, if any, Duquesne Light used to identify if it had any potential CHP hosts within its service territory.

Duquesne Light is greatly expanding the amounts it proposes to charge CHP hosts and any entity or individual who may receive service under Tariff Rider 16. It is hard to imagine how it would be irrelevant if Duquesne Light and the Commission knew how many potential customers Duquesne Light knows it will have or suspects it will have under this tariff provision. Put simply, it is relevant for the Commission to know how many CHP hosts and potentially-affected customers are in Duquesne Light’s territory. If the answer from Duquesne Light is “none” or “only a few,” then at that point the efforts Duquesne Light took to identify such affected customers would be pertinent and germane to the base rate proceeding.

Accordingly, this question is clearly relevant to the base rate proceeding, and Duquesne Light will be compelled to answer the identified interrogatory No. 15.

The information Peoples requests is both relevant and discoverable and is not excessive in the scope of requested information or requested documentation. Duquesne Light was in error to refuse to provide the requested information. In the Ordering Paragraphs below, Duquesne Light will be required to respond to Peoples’ Set II Interrogatories Nos. 1-27, 32, 33 and 42-44.

THEREFORE,

IT IS ORDERED:

1. That the Motion dated May 29, 2018 to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Peoples Natural Gas Company LLC to Duquesne Light Company – Set II, Nos. 1-27, 32, 33 and 42-44, on May 16, 2018, is hereby granted.

2. That on or before 4:00 p.m. on Friday, June 22, 2018, Duquesne Light Company shall serve the following documentation noted in paragraph 4 below upon Peoples Natural Gas Company LLC.

3. That failure of Duquesne Light Company to comply with paragraph 2 above may result in an order consistent with the provisions of 52 Pa.Code § 5.372(a).

4. That Duquesne Light Company shall fully answer the Interrogatories and Requests for Production of Documents Propounded by Peoples Natural Gas Company LLC to Duquesne Light Company – Set II, Nos. 1-27, 32, 33 and 42-44, on May 16, 2018.

Date: June 20, 2018 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Katrina L. Dunderdale

Administrative Law Judge

**R-2018-3000124 – PENNSYLVANIA PUBLIC UTILITY COMMISSION V. DUQUESNE LIGHT COMPANY 1308(D)**

*(Revised 6/18/18)*

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1. The preliminary objections were entitled “Motion for Partial Judgment on the Pleadings”. [↑](#footnote-ref-1)